

Pat. # 6,637,537

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Carl Porter and Morley Oerther

Plaintiffs

v.

MBRP, Inc;

Grand Rock Truck Exhaust Systems, Inc.;

BD Diesel, Inc.;

ANSA Automotive Parts Distributors, Inc.;

Heartthrob Exhaust, Inc. and

Tenneco, Inc.

Defendants

Case No. 3:10-cv-2617

Judge

Magistrate Judge

JURY TRIAL DEMANDED

COMPLAINT

Parties

1. Plaintiff Carl Porter is an individual and citizen of the State of Michigan, having his principal place of business at 1432 North St., Samaria, MI 48177.
2. Plaintiff Morley Oerther is an individual and citizen of the State of Michigan, having his principal place of business at 8840 Todd Road, Ida, MI 48140.

3. On October 28, 2003, U.S. Patent No. 6,637,537 (hereinafter “the ‘537 patent”), titled DUAL STACK EXHAUST SYSTEM, was duly and legally issued to Carl Porter and Morley Oerther, the inventors thereof. A true copy of the ‘537 patent is attached as Exhibit 1.

4. Plaintiffs have been and continue to be the owner of the entire right, title, and interest in said patent.

5. Defendant MBRP, Inc. (hereafter “MBRP”) is, upon information and belief, a corporation organized under the laws of the Province of Ontario, Canada; and having a principal place of business at 315 Old Ferguson Road, Huntsville, ON P1H 2J2, Canada; and doing business in the Western Division of this District in, *inter alia*, Holland, Lima, New Knoxville, and Norwalk, Ohio.

6. Defendant Grand Rock Truck Exhaust Systems, Inc. (hereafter “Grand Rock”) is an Ohio Corporation having a principal place of business in this District at 395 Fountain Avenue, Painesville, OH 44077.

7. Defendant BD Diesel, Inc. (hereafter “BD Diesel”) is, upon information and belief, a corporation organized under the laws of the Province of British Columbia, Canada; and having a principal place of business at Unit A-10, Abbotsford, British Columbia, Canada V2S 7M9.

8. Defendant ANSA Automotive Parts Distributors, Inc. (hereafter "ANSA") is a Georgia Corporation having a principal place of business at 7649 Airport Dr., P.O. Box 10215, Macon GA 31297-0215.

9. Defendant Heartthrob Exhaust, Inc. (hereafter "Heartthrob") is a Minnesota corporation having a principal place of business at 60819 US Hwy 12 Litchfield, MN, 55355-5227.

10. Defendant Tenneco, Inc. (hereafter "Tenneco") is an Illinois corporation, having a principal place of business at 500 North Field Drive, Lake Forest, IL 60045.

11. Defendants have manufactured, marketed, and sold dual stack truck exhausts that infringe the '537 patent in this District and throughout the United States. Copies of advertisements for allegedly infringing products made or sold by each Defendant are attached as Exhibits 2-7. (Exhibit 2, p. 1 as to Defendant MBRP; Exhibit 3, p. 2 as to Defendant Grand Rock; Exhibit 4, p. 1 as to Defendant BD Diesel; Exhibit 5 as to Defendant ANSA; Exhibit 6, p. 4 as to Defendant Heartthrob; Exhibit 7, p. 1 as to Defendant Tenneco.)

Jurisdiction and Venue

12. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction under the patent laws of the United States, 35 U.S.C. § 1 et seq. and under 28 U.S.C. §§ 1331 and 1338.

13. This Court has personal jurisdiction over Defendants because they are either Ohio Corporations resident in this District and/or because, *inter alia*, acts giving rise to Plaintiffs claims were committed by, or on behalf of Defendants in the State of Ohio, and specifically in the Northern District of Ohio, because Defendants has been involved (either directly or through their agents) in the ongoing and regular transaction of business in the State of Ohio, and because Defendants have infringed on Plaintiffs' patent by acts committed both inside and outside of the State of Ohio while regularly doing business in this state and deriving substantial revenue from goods used or consumed in this State.

14. Venue is proper in this district as venue is governed by 28 U.S.C. 1400 and as to alien Defendants, by 28 U.S.C. 1391.

COUNT I - PATENT INFRINGEMENT

15. Plaintiff incorporates by reference and realleges the allegations set forth in the preceding paragraphs as though set forth fully herein.

16. Within the jurisdiction of this Court in this District and elsewhere, Defendants have infringed U.S. Letters Patent No. 6,637,537; by manufacturing, marketing, and selling the aforementioned dual truck exhaust stacks.

17. Defendants' infringement of Patent No. 6,637,537 has damaged Plaintiff.

18. Defendants' continued infringement of Patent No. 6,637,537 is irreparably damaging Plaintiffs and will continue to irreparably damage Plaintiffs unless Defendants' infringement is enjoined by this Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

1. Issuance of preliminary and permanent injunctions enjoining further acts of infringement of said Patent No. 6,637,537;
2. An award of damages and costs, including but not limited to:
 - a. an award of damages for infringement of said patent;
 - b. an award of increased damages for willful and wanton infringement of said patent; and
 - c. an assessment of costs and disbursements, together with an award of reasonable attorney's fees and prejudgment interest pursuant to 35 U.S.C. § 285.

JURY DEMAND

Plaintiffs hereby demand trial by jury on all issues triable to a jury.

Dated: November 16, 2010

By: s/ Michael J. Gallagher

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CERTIFICATE OF FILING

I hereby certify that this "Complaint" has been filed electronically with the Clerk, United States District Court for the Northern District of Ohio, on November 16, 2010.

s/ Michael J. Gallagher, Esq.
November 16, 2010

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Carl Porter, et al.,

Case No. 3:10 CV 2617

Plaintiffs,

DISMISSAL ORDER

-vs-

JUDGE JACK ZOUHARY

Grand Rock Truck Exhaust Systems, Inc.,
et al.,

Defendants.

A Settlement Conference held on March 14, 2011 before Magistrate Judge James Knepp resulted in a settlement.

Therefore, the docket is marked: "Settled and dismissed without prejudice. Each party is to bear its own costs."

Further, any subsequent Dismissal filed within thirty (30) days setting forth specific settlement terms and conditions shall supersede this Order. The Court also retains jurisdiction to enforce the terms of the settlement.

IT IS SO ORDERED.

s/ Jack Zouhary
JACK ZOUHARY
U. S. DISTRICT JUDGE

March 15, 2011